IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10584 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVESH @ BHALO @ BHAVLO RAMJIBHAI MAKWANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10584 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/02/2003

ORAL JUDGEMENT

By filing this petition, the petitioner detenu has challenged his detention order dated 11.7.2002, by which he is detained under preventive detention as a "dangerous

person", under the Prevention of Anti Social Activities Act. Along with the order of detention, the petitioner detenu has been served with the grounds of detention of the even date.

2. In the grounds of detention, it is mentioned that the petitioner is a dangerous person and is indulging himself in committing robbery, theft etc. The particulars about his activities are highlighted in paragraphs 1 and 2 of the grounds of detention. It is also mentioned that three criminal cases are filed against the petitioner which are pending. Considering the statements of the witnesses and the aforesaid criminal cases, the petitioner is detained. The said order of detention is challenged by the petitioner on various grounds.

3. The petitioner has mainly relied upon the fact that even though the petitioner was in judicial custody at the relevant time in connection with all the three cases, the authority has not properly appreciated the fact as to why he was required to be detained under preventive detention though he is in judicial custody.

Learned Advocate for the petitioner has relied upon the decision of the Apex Court in the case of Amritlal & ors. v. Union Government and ors., reported in AIR 2000 SC 3675, wherein in paragraphs 4, 6 and 7, it has been observed as under:

> "4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but off-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416: (AIR 1986 SC 2090): 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

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"6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090: 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

... ..."

4. In the grounds of detention, at page no.14 of the compilation, it is mentioned that the petitioner is in judicial custody at the District Jail, Surat, in connection with all the aforesaid three cases, but he may get bail at any time and thereafter he may continue his activity. However, the authority has not properly appreciated this aspect to reach the said satisfaction that the petitioner may be released on bail and as to whether any application for bail was moved by the petitioner at the relevant time.

5. Considering the aforesaid aspect of the matter of not stating proper particulars as to on what basis the authority has come to the conclusion that the petitioner is likely to be released on bail and considering the decision of the Apex Court as above, the order of detention is required to be quashed and set aside.

6. In the result, the petition is allowed. The order of detention dated 11.7.2002 passed against the detenu is quashed and set aside. The detenu is ordered to be released forthwith unless he is required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)
Sreeram.